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is ministerial and can therefore be delegated. *Kennedy v. Mayor of Pawtucket*, 24 R. I. 461; *Allison v. Corker*, 67 N. J. L. 596. The unconstitutional element found is that the recipients of the power are not public officers. But when authority to settle disputes as to who is the regular party nominee has been given to party officials, the delegation of power is constitutional, and the decision of the officials designated is final. *State v. Hauser*, 122 Wis. 534. And the appointment of state examining boards may also be delegated to voluntary associations. *Ex parte Gerino*, 143 Cal. 412. It seems impossible to reconcile the present case with these decisions. Furthermore, it is settled that when certain ministerial functions under primary laws have been entrusted to the officers of a political party, *mandamus* will issue to compel them to act. *State v. Jones*, 74 Oh. St. 418. Since the power of appointment can legally be delegated, and since the county central committees can be compelled to act, they are, in effect, constituted public officers by the very statute in question, and the reasoning of the court fails.

CONSTITUTIONAL LAW—SEPARATION OF POWERS—JUDICIAL RECOUNT AND RE-CANVASS OF BALLOTS. — The constitution of New York provides that "all laws regulating or affecting boards of officers charged with the duty of . . . counting votes at elections, shall secure equal representation of the political parties," and also that "the trial by jury in all cases in which it has been heretofore used shall remain inviolate forever." A statute provided that upon petition of any candidate for a certain office, the supreme court must proceed to a summary canvass of the vote at a certain election. A commissioner was to submit all disputed ballots to the court, which should pass upon each and, in conclusion, issue an order which should supersede the returns of the election officers. *Held*, that the statute either creates a board to recount the ballots, and therefore is unconstitutional because the board is not of the bi-partisan character required, or provides for a judicial determination of the title to an office, and is unconstitutional because of the failure to provide for a jury trial. *Metz v. Maddox*, 32 N. Y. L. J. 801 (N. Y. Ct. App. Nov. 19, 1907).

For a discussion of the power of the legislature to impose non-judicial duties upon the courts, suggested by the decision of this case in the lower court, see 21 HARV. L. REV. 138.

CONSTITUTIONAL LAW — TRIAL BY JURY — WAIVER IN CRIMINAL CASES. — In a prosecution for violation of the game laws, the defendant pleaded not guilty, waived a jury, and the case was tried by the court. A statute provided that issues of fact must be tried by a jury. *Held*, that judgment of conviction is void. *In re McQuown*, 91 Pac. 689 (Okl.). See NOTES, p. 212.

CONSTITUTIONAL LAW — WHO MAY SET UP UNCONSTITUTIONALITY — CORPORATION BARRED BY ACCEPTING STATUTE WITH CHARTER. — Massachusetts enacted a statute whereby all street railroads were required to transport children to and from public schools at half the regular fare. Later the appellant was incorporated in Massachusetts, its charter subjecting it to all the duties set forth in all general laws relating to street railway companies. The appellant was convicted for not carrying such children at half fare. *Held*, that it may not contest the constitutionality of the statute. *Interstate Consolidated St. Ry. Co. v. Massachusetts*, U. S. Sup. Ct., Nov. 4, 1907.

It is clearly settled that a state may fix the terms upon which it will allow the use of the corporate franchise. The court seeks to determine the terms agreed upon, because to these the corporation cannot later object. *Chicago, etc., Ry. v. Zerneck*, 183 U. S. 582. An express reference to statutes would seem sufficient to incorporate them as terms of the charter, and indeed some courts have considered all existing statutes to be so incorporated without reference. *Alabama, etc., Ry. v. Odeneal*, 73 Miss. 34; *cf. Park Bank v. Remsen*, 158 U. S. 337. But though it is granted that the corporation has accepted the obligations of all laws of a class, still it would seem that it could show that something on the statute-books was unconstitutional, and therefore not a law. Consequently the court must construe the terms to be that the corporation accepts everything